**Eazor Express, Inc. *and* Truck Drivers, Oil Drivers, Filling Station & Platform Workers Local 705 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** Cases 6-CA-15619 and 6-CA-15872

31 July 1984

## DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

Upon a charge filed 7 July 1982 by Truck Drivers, Oil Drivers, Filling Station & Platform Workers Local 705 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Union), and received by Eazor Express, Inc. (the Respondent), the General Counsel of the National Labor Relations Board, by the Regional Director for Region 6, issued a complaint and notice of hearing on 31 August 1982 against the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act. Copies of the complaint and notice of hearing before an administrative law judge were served on the parties to this proceeding. On 10 September 1982 Respondent filed its answer to the complaint denying the commission of any unfair labor practices.

Thereafter, upon another charge filed by the Union 21 October 1982 and received by the Respondent, the General Counsel issued a consolidated amended complaint against the Respondent, together with an order consolidating cases and notice of hearing, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act. Copies of the order consolidating cases and consolidated amended complaint and notice of hearing were served on the parties to this proceeding. On 15 December 1982 the Respondent filed its answer to the consolidated amended complaint denying the commission of any unfair labor practice.

Thereafter, on 19 and 26 January 1983 and 1 February 1983, the Respondent, the Union, and the General Counsel, respectively, entered into a stipulation of facts and joint motion to transfer this proceeding directly to the Board for findings of fact, conclusions of law, and an order. The parties agreed that the charges, complaint and notice of hearing, order consolidating cases, consolidated amended complaint and notice of hearing, answer to complaint, answer to consolidated amended complaint, and the stipulation of facts, including the exhibits attached thereto, constituted the entire record in this case and that no oral testimony was necessary or desired by any of the parties. The parties waived a hearing and the taking of testimony or the submission of evidence before an administrative law judge, and the issuance of an administrative law judge's decision. On 24 August 1983 the Board approved the stipulation of facts and ordered the proceeding transferred to the Board. The Board also granted permission and time for the filing of briefs. Thereafter only the General Counsel filed a brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the basis of the stipulation, brief, and the entire record in this proceeding, the Board makes the following findings.

### I. BUSINESS OF THE EMPLOYER

Eazor Express, Inc. is and has been at all material times a Pennsylvania corporation with its principal office and place of business in Pittsburgh, Pennsylvania, and facilities located in various States of the United States, including a facility in Chicago, Illinois, where it has been engaged in the interstate and intrastate transportation of freight and commodities. Only the Respondent's Chicago, Illinois general commodities terminal is involved in this proceeding. During the 12-month period ending 31 July 1982, the Respondent, in the course and conduct of its business operations, derived gross revenue in excess of $50,000 for the transportation of freight and commodities from the Commonwealth of Pennsylvania to points outside Pennsylvania.

The parties stipulated, and we find, that the Respondent is, and has been at all material times, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies and purposes of the Act to assert jurisdiction.

### II. THE LABOR ORGANIZATION INVOLVED

The parties stipulated, and we find, that Truck Drivers, Oil Drivers, Filling Station & Platform Workers Local 705 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### A. *The Stipulated Facts*

The Union has been the exclusive collective-bargaining representative of Respondent's local cartage drivers in the Respondent's General Commod-

ities Division (GCD) located in Chicago, Illinois.[1] This recognition was embodied in a series of collective-bargaining agreements, the most recent of which was effective by its terms for the period of 1 April 1979 to 31 March 1982. In addition to its GCD, the Respondent also operated a Special Commodities Division (SCD). In the Chicago area, the Respondent's SCD was located in Hammond, Indiana. The GCD generally hauled less than full loads of products such as packages and appliances; the SCD generally hauled full truckloads of products such as steel, glass, roofing materials, and other low tariff items. The Union never represented employees in the SCD.

On 1 March 1982[2] a certificate of incorporation was issued for Eazor Special Services, Inc. (Eazor Special) a wholly owned subsidiary of the Respondent formed to do the work formerly done by the SCD. The assignment and assumption transferring the assets and liabilities of the SCD to Eazor Special took place on 31 July.

In the meantime, on 26 February, the Respondent notified the Union that it intended to close its GCD, including its Chicago operations in that division. As of that date the Respondent began winding down its GCD operations and about 20 March it closed its Chicago facility and laid off all employees represented by the Union.

On 7 June the Union filed a grievance claiming that since 1 January to 31 March the Respondent violated the subcontracting provision and related provisions in the collective-bargaining agreement.[3] Also on 7 June the Union, by letter, requested the Respondent to furnish it with certain information, including records on pickups and deliveries of commodities covered by the collective-bargaining agreement, that had application to the work performed within the classification contained in the contract.[4] The Respondent did not provide any of the requested information.

Subsequently, notice of application filed with the Interstate Commerce Commission (ICC) to transfer to Eazor Special Respondent's operating authority for the transport of general commodities in States including Illinois appeared in the 1 August edition of the Federal Register. By letter dated 22 September, the Union requested the Respondent to provide it information as to whether Eazor Special was, or would be, performing work covered by the collective-bargaining agreement.[5] The Respondent did not respond to the Union's information request.

### B. *Discussion and Conclusions*

Based on the facts to which the parties have stipulated, we find that the Respondent has refused to bargain in violation of Section 8(a)(5) and (1) of the Act by failing to provide requested information concerning possible precontract expiration breaches of the collective-bargaining agreement's subcontracting and related provisions. However, we find that the Respondent was under no duty to provide information pertaining to postcontract expiration matters.

It is well established that an employer must provide a union with requested information "if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' exclusive bargaining representative." *Associated General Contractors of California*, 242 NLRB 891, 893 (1979).[6] The Board uses a liberal, discovery-type standard to determine whether information is relevant, or potentially relevant, to require its production.[7] Information necessary for proceeding and arguing grievances under a collective-bargaining agreement, including that necessary to decide whether to proceed with a grievance or arbitration, must be provided as it falls within the ambit of the parties' duty to bargain.[8]

Judged against these standards, it is clear that the information requested by the Union as it concerns matters arising during the life of contract is relevant and necessary to processing the pending grievance and to monitoring the terms of the contract while it was in effect. The Union requested only information on pickups and deliveries covered by the contract and applicable to work performed

[1] The parties stipulated that this unit was an appropriate unit for the purposes of collective bargaining within the meaning of Sec. 9(b) of the Act, and that the Union was the exclusive representative of these employees by virtue of Sec. 9(a) of the Act.

[2] All dates hereinafter are in 1982 unless otherwise indicated.

[3] The grievance is being held in abeyance pending resolution of the issues in this proceeding.

[4] The specific information request was for "records—such as correspondence, freight or other bills—from 1 January 1982 through 31 March 1982, and from 1 April 1982 to date concerning pick-ups and deliveries of commodities which were covered by the Cartage Agreement and had application to the work performed within the classifications contained in the Cartage Agreement and which were and are being made by Eazor, including any subsidiary, division of operations, such as special commodities division, general commodities division, and Consumer Transport."

[5] The Union requested the following information:

"1. Whether Eazor Special Services, Inc. is performing work within the classification of drivers described in the Cartage Agreement, and the date when it began.

2. If the answer to paragraph 1 is in the negative, does Eazor Special Services Inc. intend to perform such work?

3. If the answer to paragraph 2 is in the affirmative, then

(a) the appropriate date such work will begin;

(b) the address of each terminal—whether owned, leased or used—in the area of the Cartage Agreement which will be used in the performance of the work referred to in paragraph 1."

[6] Enfd. 633 F.2d 766 (9th Cir. 1980). See generally *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967).

[7] *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

[8] *NLRB v. Acme Industrial*, above. See, e.g., *Bickerstaff Clay Products*, 266 NLRB 983 (1983).

by those in classifications contained in the contract. The Respondent's only proffered defense on this matter, as stated in its answer to the complaint, is that it had never been requested or required to provide such information in any prior arbitration cases in which it had been involved. There is no evidence in the stipulation concerning what prior information requests, if any, had been made by the Union. In light of this factor, we agree with the General Counsel that there can be no past practice or waiver argument of which the Respondent can avail itself. To the extent the Respondent may be contending that the requested information is not relevant to the proceeding, its contentions are devoid of appropriate supporting argument and, considering the nature of the information requested, without merit. Thus we find that the Respondent violated its duty to bargain by failing to provide information requested by the Union for the time period of 1 January 1982–31 March 1982.

However, the Union's additional requests for information stand on a different footing from the request discussed above. The stipulated facts indicate that the Respondent gradually closed its Chicago GCD terminal beginning on 26 February, and ending on 20 March, just a week prior to the expiration date of the contract. The Respondent duly gave notice to the Union of its intent to close the facility. There is no evidence in the stipulated facts that the Respondent failed to meet and bargain with the Union over the decision to close the Chicago GCD terminal, or the effects of that decision.[9] There are no allegations that the Respondent unlawfully closed the facility, or unlawfully laid off its employees. Although the notice in the Federal Register stated that the Respondent had applied to transfer its authority to transport general commodities to Eazor Special, the record before us is devoid of any evidence that Easor Special is a joint employer, single employer, alter ego, and/or successor employer of the Respondent. Despite this set of facts, the General Counsel would have this Board order the Respondent to divulge information to the Union concerning postclosing and postcontract expiration matters. This we shall not do. It may be that, in certain circumstances, the information requested by the Union should be provided by an employer. However, the facts here indicate that all employees had been laid off pursuant to a lawful closing of the Chicago GCD terminal.[10] Since the facility closed and the contract had expired, no matters remained thereafter for which the Union was entitled to obtain information.[11] That is, there were no employees remaining in the Respondent's employ represented by the Union concerning whom a bargaining obligation could be generated. A union's right to bargain, and thereby to obtain information, does not extend in perpetuity. The facts in this case indicate that the Respondent terminated its operation on 31 March. Hence, there was no obligation after that date for the Respondent to provide the requested information to the Union. Accordingly, we shall dismiss those allegations of the complaint concerning the 7 June request of information from 1 April "to date," and also those allegations concerning the 22 September letter.

On the basis of the foregoing findings of fact and the entire record, we make the following

## CONCLUSIONS OF LAW

1. Eazor Express, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Truck Drivers, Oil Drivers, Filling Station & Platform Workers Local 705, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to provide information concerning records such as correspondence, freight, or other bills from 1 January 1982 to 31 March 1982, relating to pickups and deliveries or commodities which were covered by the collective-bargaining agreement between the Respondent and the Union, which had application to the work performed within the classifications contained in that agreement, and which were being made by the Respondent, including any subsidiary, division, or operation, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[9] See generally *First National Corp. v. NLRB*, 452 U.S. 666 (1981).

[10] The General Counsel asserts that the timing of the incorporation of Eazor Special and the application to transfer general commodities ICC rights to Eazor Special indicates that the Respondent concealed information and deceived the Union when it closed the Chicago facility. We are constrained to note that there are no complaint allegations concerning these issues, and that the Respondent has not been charged with any violations of the Act on these matters.

[11] The General Counsel attempts to surmount this critical problem by asserting that there is no evidence that either party gave notice of a desire to terminate the collective-bargaining agreement, or that either party requested bargaining. By virtue of the closing of the facility and the expiration of the contract, we assume, absent facts to the contrary, that the contractual obligations ended at that point. We emphasize that we are governed here by the stipulated facts of the case.

## THE REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action in order to effectuate the purposes of the Act.

## ORDER

The National Labor Relations Board orders that the Respondent, Eazor Express, Inc., Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Truck Drivers, Oil Drivers, Filling Station & Platform Workers Local 705, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by refusing to supply relevant information upon request.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Furnish on request to the Union records such as correspondence, freight, or other bills, from 1 January 1982 to 31 March 1982, relating to pickups and deliveries of commodities which were covered by the collective-bargaining agreement between the Respondent and the Union, which had application to the work performed within the classifications contained in that agreement, and which were being made by the Respondent, including any subsidiary, division, or operation.

(b) Post at its offices copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[12] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectivley with Truck Drivers, Oil Drivers, Filling Station & Platform Workers Local 705 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by refusing, upon request, to furnish information necessary and relevant for the Union's use in policing and administering the collective-bargaining agreement between us and the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, furnish the Union with records such as correspondence, freight, or other bills, from 1 January 1982 to 31 March 1982, relating to pickups and deliveries of commodities which were covered by the collective-bargaining agreement between us and the Union, which had application to the work performed within the classifications contained in that agreement, and which were being made by us, including any subsidiary, division, or operations.

EAZOR EXPRESS, INC.